

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALONZO SMITH,) Docket No. 16 C 3404
)
Plaintiff,)
)
vs.)
)
JON BURGE, et al.,) Chicago, Illinois
) December 10, 2018
Defendants.) 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTIONS
BEFORE THE HONORABLE AMY J. ST. EVE

APPEARANCES:

For the Plaintiff: PEOPLE'S LAW OFFICES
BY: MR. G. FLINT TAYLOR, JR.
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For Defts. Shines,
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PROCEEDINGS RECORDED BY

MECHANICAL STENOGRAPHY

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1 THE CLERK: 16 C 3404, Smith vs. Burge.

2 MR. TAYLOR: Good morning, Judge, Flint Taylor for
3 the plaintiff Alonzo Smith.

4 MR. THOMSON: And Brad Thomson, T-h-o-m-s-o-n, also
5 for plaintiff Smith.

6 MS. SCHELLER: Good morning, your Honor, Assistant
7 State's Attorney Jessica Scheller on behalf of defendants
8 Kelly and Cook County.

9 MR. KUHN: Assistant State's Attorney Derek Kuhn on
10 behalf of defendant Paul Kelly and Cook County.

11 MR. GIBBONS: Good morning, your Honor, John Gibbons
12 on behalf of the City of Chicago.

13 MR. MICHALIK: Paul Michalik and Terry Burns on
14 behalf of defendants Daley, Needham, Hillard, Shines, and
15 Martin.

16 MR. HALE: Good morning, your Honor, Andy Hale for
17 defendants Burge, Byrne and Dignan.

18 THE COURT: Good morning.

19 You are here on two motions, both of which seek
20 essentially the same thing: The motion of Cook County
21 defendants and the City defendants to strike certain portions
22 of plaintiff's notice of acceptance of the Rule 68 offer of
23 judgment.

24 Mr. Taylor, what is your response?

25 MR. TAYLOR: Yes --

1 THE COURT: They are seeking to strike certain
2 factual allegations that have not been -- that no factual
3 findings have been made on.

4 MR. GIBBONS: Your Honor, I don't mean to interrupt
5 Mr. Taylor, but a preliminary matter. As we discussed in
6 chambers during mediation, the settlement agreement reached by
7 the City and many of the individual defendants has not yet
8 been presented to City Council.

9 THE COURT: Correct.

10 MR. GIBBONS: We're in open court now. I just wanted
11 to --

12 THE COURT: And we are not discussing any amounts.
13 Yes, correct.

14 MR. GIBBONS: Thank you.

15 THE COURT: Correct.

16 MR. TAYLOR: And we were careful not to mention that,
17 Judge.

18 THE COURT: I think his point is do not mention it
19 now either --

20 MR. TAYLOR: No.

21 THE COURT: -- because we are in open court.

22 MR. TAYLOR: Yeah. I had no intention of doing so.

23 THE COURT: Okay.

24 MR. TAYLOR: Judge, I think what -- our response to
25 their offer was predicated on their attempt to add into the

1 offer the statement that this was not an admission of
2 liability. We felt that because of that, we had the right
3 to -- and it made it relevant -- to state our view of what --
4 why we were taking the offer and what the offer meant to our
5 client.

6 And, so, that's why we added the few paragraphs that
7 we added.

8 The cases that are cited by the defendants in their
9 two motions -- or the case, I should say -- talks about
10 motions to strike being very disfavored; that they have to be
11 completely -- what they're trying to strike has to be
12 completely without merit.

13 What we wrote was brief; I think to the point of what
14 has been established in the past in terms of the County and
15 the County's role in this. It has been admitted to by the
16 chief officer of the County at an earlier point.

17 And, so, we felt that -- unlike a settlement
18 agreement where you have to swallow the fact that they say
19 that it's not an admission of liability, we felt here an offer
20 of judgment -- since they went beyond the boundaries of just
21 making the offer, that we would clarify our position and what
22 we felt was the reality of the situation.

23 And, so, that's why we did it, and that's the basis
24 of our pleading or our acceptance.

25 THE COURT: Ms. Scheller?

1 MS. SCHELLER: Your Honor, the inclusion of the
2 language "this is not an admission of liability" is standard,
3 whereas the inclusion of the factual allegations Mr. Taylor
4 intended to include is not.

5 Moreover, the statements by certain individuals
6 related to other cases or other parties are not relevant here.
7 We offered judgment in a sum certain; we followed the rules;
8 and, Mr. Taylor has responded to that by accepting the
9 judgment, but then attempting to smear both my clients, as
10 well as all of the other parties in this case.

11 I don't believe that that is an appropriate way to
12 move forward, and we do believe that it should be stricken in
13 whole, Paragraphs 3 through 6.

14 THE COURT: Mr. Gibbons, do you want to add anything?
15 You have also asked to strike Paragraph 2, which I
16 know is subject to the Committee reviewing and approving it.
17 I am not sure what your exact objection to Paragraph 2 is with
18 the reference to Docket 240.

19 MR. GIBBONS: Your Honor, I don't have it because I
20 came from the train because it was late. So, I didn't have a
21 chance to pick up the paperwork. So, I'm going to have to --

22 THE COURT: Just take a look. Mr. Michalik has it.

23 MR. TAYLOR: Paragraph 2 just simply says that the
24 case has been --

25 THE COURT: Found it?

1 MR. TAYLOR: -- settled against the City.

2 THE COURT: I know. That is why I am asking the
3 question. I see that as different than Paragraphs 3 through
4 6.

5 MR. MICHALIK: Well, I would just add, Judge, on
6 behalf of the City defendants that, first off, it's irrelevant
7 to the offer of judgment that was offered by the County. It
8 has nothing to do with that. And that's part of the concern
9 that we raised in our motion -- that all of this is completely
10 irrelevant. We're not any party to that, yet there are
11 allegations based on newspaper articles, things of that
12 nature, in which there are implications against the City
13 defendants, as well as, as we point out in our motion,
14 contrary to the terms of the settlement agreement that was
15 agreed to in chambers.

16 MR. HALE: And I would just join in that on behalf of
17 my clients, your Honor.

18 MR. GIBBONS: I don't have anything more to add to
19 that.

20 I mean, that was, I think, our purpose behind
21 Paragraph 2. I mean, we negotiated hard in chambers. We all
22 left, worked for 48 hours to get a minute order to the Court
23 that we agreed on, where it was specifically stated that the
24 City defendants and the City were not admitting liability.
25 And, then, to have these paragraphs put in here -- which makes

1 it seem like we're admitting liability and are co-conspirators
2 and there's been factual proof of a cover-up and torture -- is
3 gratuitous to what, I think, the County and the plaintiffs
4 were trying to accomplish.

5 We just -- we literally do not want that unopposed
6 and unobjected to in the public record.

7 THE COURT: Do you want anything -- the last word,
8 Mr. Taylor.

9 MR. TAYLOR: The last word is, very simply, Judge, it
10 may have been -- it might be irrelevant if they hadn't put
11 that part in about it's not an admission of liability. And I
12 think an offer of judgment is different than when you're
13 settling and you -- and that's the terms you agree to. We
14 didn't agree to those terms in terms of the offer of judgment,
15 and that's why we put the additional language in.

16 So, I don't think it's irrelevant. I think it's
17 relevant to the choice that the County made.

18 THE COURT: How is it, under the law, that an offer
19 of judgment is an admission of liability? Rule 68 does not
20 provide for that.

21 MR. TAYLOR: I'm sorry, say that --

22 THE COURT: How is it, under the law, that an offer
23 of judgment is an admission of liability?

24 That is not what the law provides for. That is not
25 what Rule 68 provides for.

1 MR. TAYLOR: Well, it's a judgment. And, so, our
2 interpretation of it is -- and it may be right; it may be
3 wrong. But that's what -- the terms that we felt that we were
4 accepting.

5 THE COURT: I am going to grant the motions to strike
6 because an offer of judgment under Rule 68 -- and that is part
7 of the purpose of it -- it is not an admission of liability.
8 And as Mr. Michalik pointed out, the City did not agree to any
9 of these facts. And no facts have been established in this
10 case. I have not made any factual findings in connection with
11 this case. And that was agreed to as part of the settlement
12 with the City.

13 The factual paragraphs you have included in here, 3
14 through 6, again, are not factual findings that the Court has
15 made. The offer of judgment was made for the reasons set
16 forth in the offer of judgment. I am going to strike
17 Paragraphs 3 through 6.

18 I see no harm in leaving Paragraph 2 in alone when
19 Paragraphs 3 through 6 are out, because it is a fact. And it
20 refers to Docket 240, which was an order by the Court. So,
21 that is not misleading.

22 But given the nature of this proceeding, I am
23 granting the Rule 12(f) motion to strike because this
24 information really is misleading and, again, is nothing that
25 the Court has found. And the offer of judgment, with the

1 language not admitting liability, is consistent with the law
2 under Rule 68.

3 So, the City's motion -- the County's motion to
4 strike is granted in full. The City's motion to strike is
5 granted in large part. I am not striking Paragraph 2. I am
6 striking Paragraphs 3 through 6.

7 And where are things with the City? You are still
8 waiting for the meeting. Can you remind me --

9 MR. GIBBONS: No --

10 THE COURT: -- of the date?

11 MR. GIBBONS: -- we finalized the settlement
12 agreement. It was finalized on Friday. But I was traveling,
13 so I didn't have a chance to do the last -- I'm going to get
14 it over to People's Law Office today.

15 THE COURT: Has it been approved? Was the amount
16 approved?

17 MR. GIBBONS: Yes.

18 THE COURT: Okay.

19 MR. GIBBONS: No, it's approved at the City level,
20 but we're not going before the Commissioners until, I think --

21 THE COURT: That was my question.

22 MR. GIBBONS: -- February or October.

23 MR. TAYLOR: October?

24 MR. GIBBONS: I mean February or March. I'm sorry.
25 That would be a good leeway. February or March.

1 I know the Court encouraged us to see if we could get
2 it done early --

3 THE COURT: Yes.

4 MR. GIBBONS: -- but I do think it's going to be
5 February or March.

6 THE COURT: Okay.

7 MR. GIBBONS: City Council meeting.

8 THE COURT: Anybody --

9 MR. TAYLOR: Judge, there is an issue -- or potential
10 issue. I don't know if there still is. We were gathering up
11 the medical documents --

12 MR. MICHALIK: Judge --

13 THE COURT: Yes.

14 MR. MICHALIK: -- if we could do this at sidebar?

15 MR. TAYLOR: Oh, I'm sorry, yes. And we can talk
16 about that at the side.

17 THE COURT: Anything else on the motions to strike?
18 And, then, we can go to sidebar on the other issue.

19 MR. BURNS: No.

20 MR. GIBBONS: No, your Honor.

21 THE COURT: So, let's go to sidebar quickly.

22 MS. SCHELLER: Your Honor, I don't believe the County
23 needs to participate in the sidebar.

24 MR. MICHALIK: No.

25 MS. SCHELLER: Is that --

1 THE COURT: Correct.

2 MS. SCHELLER: -- correct?

3 MR. TAYLOR: No.

4 THE COURT: You do not.

5 MS. SCHELLER: Thank you.

6 (Sealed proceedings had at sidebar:)

7 * * * * *

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9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

11 /s/ Joseph Rickhoff
12 Official Court Reporter

December 18, 2018

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